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Mark Sherman

November 14, 2001

Ms. Eloise Gore  
Federal Communications Commission  
Cable Services Bureau  
The Portals  
445 12th Street, SW  
Washington, DC 20554

### **ExParte Communication in CS Docket No. 95-184**

Dear Eloise,

In response to your inquiry regarding examples of perpetual MDU contracts, I offer the following:

I assume there is no need to rehash the anti-competitive effects of perpetual contracts in the MDU market. We are concerned with the definition of a "perpetual contract."

Because the specific language of perpetual contracts may (and does) vary widely, they should be defined broadly in terms of their effects.

I would define a perpetual contract as:

"Any contract, regardless of its specific language, that in purpose or effect, locks out competition from the MDU market for an indefinite time period."

Examples include contracts that:

1. Provide for no definite termination date;
2. Remain in force "for the duration of the provider's franchise";
3. Remain in force "for the duration of the provider's franchise and

### **Independent Multi-Family Communications Council**

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any extensions, assignments or renewals thereof";

4. Purport to establish an easement, right of way or other property interest allowing the provider to maintain control of existing MDU inside wiring for an indefinite time period for either distribution of video programming or for the incumbent provider's future intended uses.

Finally, it is important that any "fresh look" rule should apply to all perpetual contracts, not just those that are exclusive. That is because any perpetual contract becomes de facto exclusive due to the fact that property owners are reluctant to allow the disruptive installation of a second wire in their MDUs.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", written in black ink.

William J. Burhop  
Executive Director